IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 15TH MARCH 2007 / 24TH PHALGUNA 1928

WP(C).No. 27180 of 2004(I)

PETITIONERS:
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1. **THOMAS. P.V., PONKALLINKAL VEEDU, P.O. ANJUKUNNU, MANANTODDY, WAYANAD DISTRICT (SECRETARY, THANIYODE SERVICE CO-OPERATIVE BANK LTD. NO.F.967, KALPETTA).**

2. **K. BINDHU, W/O. SUNILDAS, K.S.E.B. SUB STATION, KOOTTAMUNDA QUARTERS KUNNUMBETTA P.O., WAYANAD. (SECRETARY, VYTHIRY SERVICE CO-OPERATIVE BANK, WYNAD.)**

3. **K.G. HEMAMALINI, `PADMAJA' PALLITHAAZHA, KALPETTA P.O., WYNAD (SECRETARY KALPETTA CO-OPERATIVE EMPLOYEES CO-OPERATIVE SOCIETY, WYNAD.)**

4. **ROSA. M.J., KALLUVETTAMKUZHIYIL HOUSE, CHENNALODE P.O., KALPETTA, WAYANAD. (SECRETARY, VYTHIRI TALUK SCHEDULED CASTE PRINING WORKERS CO-OPERATIVE SOCIETY LTD., WYNAD.)**

5. **M. SUMESHAN, EAREMKOLLY HOUSE, KARIMKOTTY P.O., KALPETTA-673 121, WAYANAD. (SECRETARY, KOTTATHARA SERVICE CO-OPERATIVE BANK LTD.NO.W.237, WAYAND.)**

6. **SATHYANANTHAN. P.S., SECRETARY, KANIYAMBETTA SERVICE CO-OPERATIVE BANK LTD.NO.1860, KANIYAMBETTA P.O., WAYANAD (SECRETARY, KANIYAMBETTA SERVICE CO-OPERATIVE BANK LTD.NO.F.1860, WYNAD.)**

BY ADV. SRI.P.N.MOHANAN

W.P.(C) NO.27180/2004

RESPONDENTS:
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1. THE KERALA PUBLIC SERVICE COMMISSION THIRUVANANTHAPURAM, REPRESENTED BY ITS SECRETARY.

2. GOVERNMENT OF KERALA, CO-OPERATION DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM REPRESENTED BY ITS SECRETARY.

*** ADDL. R3 IS IMPLEADED**

3. GENERAL MANAGER, WYNAD DISTRICT CO. OPERATIVE BANK, WAYANAD.

*** IS IMPLEADED AS ADDL.R3 AS PER ORDER DT.22.2.07 IN IA. 7735/05.**

BY ADV. SRI.P.C.SASIDHARAN, SC, KPSC
GOVERNMENT PLEADER SRI.P.K.RAVIKRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08/03/2007, ALONG WITH WPC NO. 33119 OF 2004 AND CONNECTED CASES THE COURT ON 15.03.2007 DELIVERED THE FOLLOWING:

W.P.(C) NO.27180/2004

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE APPLICATION INVITED TO THE POST OF BRANCH MANAGER IN THE GAZETTE DT.3.8.04.

/TRUE COPY/

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S.SIRI JAGAN, J.

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W.P.(C).Nos.27180, 33119, 36121,

36279 and 36498 of 2004

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Dated this the 15th day of March, 2007

J U D G M E N T

In all these writ petitions the challenge is against the Notification dated 3.8.2004 issued by the Public Service Commission inviting applications for the post of Branch Manager in District Co-operative Banks in the Districts of Thiruvananthapuram, Pathanamthitta, Alappuzha, Idukki, Ernakulam, Thrissur, Palakkad, Kannur and Wayanad. In W.P(C).No.36121/2004 the Notification (Ext.P2) is challenged on the ground that Rule 186 (1)(IA)(i) of the Kerala Co-operative Societies Rules as it stood at the time of publication of the notification is unconstitutional in so far as it does not prescribe Higher Diploma in Co-operation or equivalent qualification along with graduation, which is an essential qualification for the lower

posts which are feeder categories for promotion to various posts up to Branch Manager in the quota prescribed for promotion, and therefore, the said Notification issued on the basis of such invalid qualifications, is liable to be quashed. In W.P(C). No.27180/2004 the very same notification is challenged both on the abovesaid ground and also on the ground that since under Rule 187 in appointments to apex Societies or Central Societies 50% of the vacancies shall be reserved for the employees of the member societies of the respective apex Societies or the Central Societies as the case may be and the entire vacancies have been notified for selection in the 50% general quota for direct recruitment the notification is liable to be quashed. In W.P(C).Nos.33119/2004 and 36498/2004 the very same notification is challenged on the second ground in W.P(C).No.27180/2004 alone. In W.P (C).No.36279/2004 the notification is not challenged, but the petitioners therein seek a direction to advise candidates to 50% of the

vacancies from among the employees of member societies of the Central Society who have undergone the selection process.

2. While the writ petitions were pending, the Government, by S.R.O.No.617/2005 amended Rule 186 (1)(IA)(i) by including HDC or equivalent qualification as an essential qualification for direct recruitment under Rule 185(2). The petitioners therefore have raised an additional ground that since this amendment is curative in nature to remove the earlier anomaly, the same is retrospective by necessary implication and the notification without prescribing the additional qualification as incorporated by the amendment is bad.

3. The counsel for the Public Service Commission opposes the contentions while the Government in the counter affidavit filed in W.P(C).No.27180/2004 supports the petitioners' contentions. The counsel for the PSC would submit that there is nothing arbitrary or discriminatory

in the unamended rule, nor is the amended rule retrospective in operation. He would submit that since MBA/C.A./M.Com./M.Sc. (Co-operation and Banking) of Kerala Agricultural University are preferential qualifications prescribed in the unamended rule, the vice of arbitrariness or discrimination is not attracted. He would also submit that since prior to 99 the said preferential qualifications were necessary qualifications, it cannot be said that the amended rule is retrospective by necessary implication because the Government was quite aware of the situation while making amendments by SRO.Nos.369/99 and 617/99.

4. Since although on different grounds, the same notification is the subject matter of these writ petitions, I am disposing of these writ petitions by this common judgment.

5. For disposal of these writ petitions, the following issues are to be decided.

(i) Whether Rule 186(1)(IA)(i) as it existed prior to amendment by SRO No.617/2005 is

unconstitutional as arbitrary and discriminatory on the ground that the same prescribes lesser qualifications than those prescribed for lower posts, which posts are feeder categories for promotion to the post of Branch Manager in the quota reserved for promotion under Rule 185(2) ?

(ii) Whether the amendment to Rule 186(1)(IA)(i) by S.R.O.No.617/2005 is retrospective in operation by necessary implication?

(iii) Whether the impugned notification of the PSC is liable to be quashed on the ground that the same has been published in violation of Rule 187, since all the available vacancies have been notified for recruitment in the 50% quota for direct recruitment in the general quota without making provision for recruitment to the 50% quota reserved for employees of the member societies affiliated to the District Co-operative Banks ?

(iv) Whether the recruitment to the post of Branch Manager in the two quotas for direct recruitments should be made simultaneously ?

(v) Whether recruitment can be made to the 50% quota reserved for employees of member societies of the District co-operative Banks from among the employees who have applied pursuant to the said notification itself ?

6. The provisions in the Kerala Co-operative Societies Rules 1969, relevant for deciding the issues are rules 185(1) and (2), Rule 186(1)(IA)(i) as it stood prior to the amendment in 2005 and after amendment and Rule 187. For convenience I shall extract the relevant rules hereunder:

Rule 185(1) and (2) read thus:

> "[**185.Promotion.-** (1) Subject to the provisions of sub rules (2), (3) and (4), appointments to the categories of posts in a society, other than those mentioned in sub-rules (2), (3)and (4), shall be made by promotion, on the basis of seniority in the feeder category. The feeder categories for this purpose shall be specified by the society by framing suitable regulations, with the approval of the Registrar.
>
> [Provided that if the senior employee/employees in the feeder category to a post relinquishes promotion, the immediate junior to the employee/employees in the feeder category shall be promoted.
>
> Provided further that if all the employees in the feeder category to a post relinquishes promotion an employee on the immediate lower category shall be promoted to the post after promoting him to the feeder category post by creating a supernumerary post. The

supernumerary post so created shall be abolished on promotion of the said employee to the higher posts.]

[Provided also that the promotion from sub staff category to the post of Junior Clerks shall be made only if such employees are having the required qualification and minimum three years service in the feeder category.]

(2) Substantive vacancies in the following posts shall be filled up by promotion and direct recruitment in the ratio 3:1 namely,

(i) Accounts Officer in the Kerala State Co-operative Bank Ltd.;

(ii) Branch Manager and equivalent posts in the District Co-operative Banks;

(iii) Deputy Manager in the Kerala State Co-operative Agricultural and Rural Development Bank;

(iv) Assistant Secretary/Manager and equivalent posts in Primary Co-operative Societies and Urban Banks having a deposit of more than 10 crores.

Provided that at no point of time the number of direct recruits shall exceed twenty five per cent of the total strength of the respective posts mentioned above."

Rule 186(1)(IA)(i) before amendment by SRO No.617/05 read thus:

"(IA) All posts to be filled up by direct recruitment under sub-rule (2) of rule 185	(1)	Graduation from a recognised University with not less than 50% of marks in the aggregate;
		OR
		B.Sc. (Co-operation & Banking of Kerala Agricultural University
	(II)	MBA/CA/M.Com/M.Sc (Co-operation and Banking) of Kerala Agricultural University will be a preferential qualification.

Rule 186(1)(IA)(i) after amendment reads thus:

"(IA) All posts to be filled up by direct recruitment under sub-rule (2) of rule 185	(i)	Graduation from a recognised University with not less than 50% of marks in the aggregate; and Higher Diploma in Co-operation (HDC or HDC & BM of the State Co-operative Union of Kerala or HDC and HDCM of National Council for Co-operative Training or successful completion of the Subordinate (Junior) Personal Co-operative Training Course (Junior Diploma in Co-operation) OR B.Sc. (Co-operation & Banking) of Kerala Agricultural University.
	(ii)	M.B.A/CA/M.Com/M.Sc. (Co.Operation and Banking) of Kerala Agricultural University will be a preferential qualification."

Rule 187 reads thus:

> "[187. **Vacancies in Apex Society or Central Societies**.- Notwithstanding anything contained in rule 186, in appointments to apex societies or central; societies, 50% of the vacancies shall be reserved to the employees of the member societies, of the respective apex society or central society as the case may be, having a minimum regular service of 3 years in any of the cadre and having the required qualification for the notified posts in the apex society or central society."

7. As is clear from Rule 185(2), the substantiative vacancies of Branch Manager have to be filled up by promotion and direct recruitment in

the ratio 3:1. From the proviso to the said rules it is clear that the ratio is to be applied to the vacancies that arise in such a way that at no point of time the number of direct recruits shall exceed 25% of the total strength of the post. Out of the vacancies earmarked for direct recruitment 50% have to be filled from among employees of member societies affiliated to the respective District Co-operative Banks. Going by Ext.P1 [in W.P(C). No.36121/2004] Recruitment Rules for Kannur District Co-operative Bank, the feeder categories to the post in the quota fixed for promotion are Senior Inspector/Senior Accountant/Chief Cashier. Those posts are to be filled up by promotion from among Accountant/Inspector. For the posts of Accountant/ Inspector the feeder categories are Clerk and Cashier. The qualifications prescribed for the posts of Clerk/Cashier are B.A/B.Sc./B.Com. with HDC or JDC or B.Com. with Co-operation or B.Sc. (Co-operation and Banking) of Kerala Agricultural University. Therefore, it is clear

that except those graduates with B.Com with Co-operation and B.Sc.(Co-operation and Banking) of Kerala Agricultural University all other graduates should possess qualifications like HDC or JDC, whereas as per the unamended Rule 185(1)(IA)(i), a mere graduate with 50% marks could also be an aspirant for direct recruitment to the post of Branch Manager. When the persons who come through the channel of promotion should necessarily possess HDC/JDC or other qualifications in Co-operation and Banking as an essential qualification, it defies logic as to how a person with a mere graduation with 50% marks could be considered for appointment by direct recruitment to the post of Branch Manager. It does not require a detailed intellectual exercise to conclude that such a prescription would not pass the test of arbitrariness and discrimination under Articles 14 and 16 of the Constitution of India. The fact that MBA/CA/M.Com./M.Sc.(Co-operation and Banking) of Kerala Agricultural University is prescribed as a

preferential qualification, although may reduce the rigour of such violation, would not completely erase the unconstitutionality since despite that fact, a graduate with 50% marks without any knowledge or experience in the subjects of Co-operation and Banking could also aspire for the post and perhaps in the absence of applicants having the preferential qualifications could be selected also. In this connection I should also note that prior to the amendment of the same rule by S.R.O.No.369/99, M.B.A. or any other equivalent qualification or C.A. was one of the requisite additional qualifications prescribed for the post. Therefore, I am of opinion that the challenge to the rule as it existed prior to the latest amendment by S.R.O.617/05 and after the amendment by S.R.O.369/99 by petitioners in W.P(C). Nos.27180/04 and 36121/04 is perfectly justified and is to be countenanced.

8. The second issue is a little more difficult to resolve. The notification amending the

section has not been made expressly retrospective. Therefore, it has to be found out whether the rule can be said to be retrospective by necessary implication. As I have already mentioned, before the amendment of the rule by S.R.O.No.369/99 the qualifications of M.B.A. and C.A. were additional necessary qualification and therefore, the rule as it stood then required a higher qualification than the one required for those who aspire for promotion. Therefore, that rule would not have attracted the vice of arbitrariness and discrimination. But by S.R.O.No.369/99, those qualifications were made as preferential qualification. Apparently, the Government realised that this is an anomaly as is clear from the explanatory note to S.R.O.No.617/2005 which reads thus:

> "Explanatory note
>
> This does not form part of the notification, but is intereded to indicate its general purport).
>
> Rule 186(1) of the Kerala Co-operative Societies Rules, 1969 has prescribed qualification of graduation in Commerce or Master Degree in Arts with Co-operation as special subject or B.A./B.Sc./B.Com. Degree of a

> recognized University with H.D.C. or J.D.C. for all posts other than those requiring technical qualification, the starting pay of which is Rs.250 and above. AS per the said Rules, H.D.C/J.D.C. is the basic qualification with graduation other than those who passes B.Com./M.A. with Co-operation as special subject. But basic qualification of H.D.C./J.D.C. is not incorporated in rule 186(1) IA(1) of the said Rules for direct recruitment. In order to remove the disparity Government have decided to amend the Rule 186 (1)(IA)(I)."

(Emphasis supplied)

9. The factors relevant for inferring necessary implication of retrospectivity have been laid down by the Supreme Court in the decision of Zile Singh v. State of Haryana and others [(2004) 8 SCC 1]. Paragraphs 13, 14, 15 and 22 of the said decision clearly spell out the criterion for deciding when a statute can be said to be retrospective in operation by necessary implication.

> "13. It is a cardinal principal of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation. But the rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the legislature to affect existing rights, it is deemed to be prospective only - "*nova constitutio futuris formam imponere debet non praeteritis*"- a new law ought to regulate what is to follow, not the past. (See Principles of Statutory Interpretation by Justice

G.P.Singh, 9th Edn., 2004 at p.438.) it is not necessary that an express provision be made to make a statute retrospective and the presumption against retrospectivity may be rebutted by necessary implication especially in a case where the new law is made to cure an acknowledged evil for the benefit of the community as a whole (*ibid.*, p.440).

14. The presumption against retrospective operation is not applicable to declaratory statutes.... In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is "to explain" an earlier Act, it would be without object unless construed retrospectively. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended.... An amending Act may be purely declaratory to celar a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect (*ibid.*, pp.468-69)

15. Though retrospectivity is not to be presumed and rather there is presumption against retrospectivity, according to Craies (Statute Law, 7th Edn.), it is open for the legislature to enact laws having retrospective operation. This can be achieved by express enactment or by necessary implication from the language employed. If it is a necessary implication from the language employed that the legislature intended a particular section to have a retrospective operation, the courts will give it such an operation. In the absence of a retrospective operation having been expressly given, the courts may be called upon to construe the provisions and answer the question whether the legislature had sufficiently expressed that intention giving the statute retrospectivity. Four factors are suggested as relevant: (*i*) general scope and purview of the statute; (*ii)* the remedy sought to be applied; (*iii)* the former state of the law; and *(iv)* what it was the legislature contemplated. (p.388) The rule agaisnt retrospectivity does not extend to protect from the effect of a repeal, a privilege which did not amount to accrued right.(P.392).

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> 22. The State Legislature of Haryana intended to impose a disqualification with effect from 5.4.1995 and that was done. Any person having more than two living children was disqualified on and from that day for being a member of a municipality. However, while enacting a proviso by way of an exception carving out a fact situation from the operation of the newly introduced disqualification the draftsman's folly caused the creation of trouble. A simplistic reading of the text of the proviso spelled out a consequence which the legislature had never intended and could not hae intended. It is true that the Second Amendment does not expressly give the amendment a retrospective operation. The absence of a provision expressly giving a retrospective operation to the legislation is not determinative of its prospectivity or retrospectivity. Intrinsic evidence may be available to show that the amendment was necessarily intended to have retrospective effect and if the Court can unhesitatingly conclude in favour of retrospectivity, the Court would not hesitate in giving the Act that operation unless prevented from doing so by any mandate contained in law or an established principle of interpretation of statutes."

Tested in the light of those parameters I am of opinion that the amendment introduced by S.R.O.No.617/2005 is curatory in nature. Before the amendment by S.R.O.No.369/99, M.B.A. or C.A. was a necessary qualification in addition to graduation, and those qualifications were necessarily superior qualifications to H.D.C. and the candidates aspiring for promotion could not have complained of any arbitrariness or discrimination in that rule.

But when it was changed as only a preferential qualification by S.R.O.No.369/99, the whole content of the rule changed. Then it was possible for a person with a mere graduation with 50% marks to aspire for the post, in which case the promotees certainly would have a good ground for grievance of arbitrariness and discrimination in so far as persons aspiring for the same post through two different channels were treated differently in the matter of essential qualifications for the post. The fact that the Government also found this to be so and as an anomaly is clear from the words, "In order to remove the disparity, Government have decided to amend the Rule 186(1)(IA)(i)" occurring in the explanatory note to S.R.O.No.617/2005. This is fully supported by the Government in paragraph 3 of their counter affidavit in W.P(C).No.27180/2004, which was filed before issuing SRO No.617/2005 which reads thus:

> "3. It is submitted that the Government also have taken note of the disparity in the qualification prescribed and have brought out a draft notification on 4.2.2005 for removing the same and it is also

> submitted that notice have been issued inviting suggestions and objections. The amendment to Rule 186 (1A) incorporating HDC, HDC BM, HDC M/JDC will be made by Government after receiving suggestions and objections."

Therefore, I am fully satisfied that all the four factors mentioned in Zile Singh's case (supra) is clearly evident in this case for inferring retrospectivity by necessary implication in this case. The obvious conclusion is that the amendment is curative in nature and therefore, retrospective in operation. If that be so, on that ground also, further proceedings pursuant to the impugned notification is liable to be interdicted.

10. Then comes the second limb of the challenge against the notification on the ground of violation of Rule 187. It is not disputed either by the Government, the PSC or the District Co-operative Societies that all the available vacancies have been notified for recruitment in the impugned notification. The P.S.C. does not have a case that the notification is intended for selection to the 50% quota fixed for employees of

primary societies affiliated to the Central Society also. Their contention seems to be that 50% reservation for employees of member societies should be limited to lower posts only since otherwise even employees holding very low posts like peon, if have the prescribed qualifications can be considered for appointment to the highest post in a Branch of a District Co-operative Bank. Admittedly the attempt of the P.S.C. to get the Government to agree to change the rule has not met with success. That being so, they are bound by the rule. If that be so, they could not have notified the entire available vacancies for recruitment in the quota for general candidates alone, which is what has been admittedly done. Although the P.S.C. would now submit that although the entire vacancies are mentioned in the impugned notification advice can be made only to the quota for direct recruitment in the 50% general quota would not hold water since there is no indication whatsoever to that effect in the impugned notification.

Therefore, obviously the impugned notification violates Rule 187 and on that ground selection cannot be proceeded with on the basis of the impugned notification, which answers the issue No. (iii) framed by me as above.

11. The answer to issue no.(iv) is only a corollary to that of issue no.(iii). I am of opinion that when recruitment to a post is to be made from two channels and there are vacancies available for accommodating more than one in each channel, then to avoid disputes regarding seniority, it is necessary to make selection and recruitment to both channels simultaneously. This is all the more so since it is the P.S.C. who is to make selection of candidates for appointment through both channels. This would also obviate the necessity to rearrange the seniority of persons who have been recruited in excess of the quota prescribed. (See the decision of the Supreme Court in Sonal Shimmappa v. State of Karnataka and others [AIR 1987 SC 2359]). Therefore, issue no.(iv) is

also answered in the affirmative.

12. As far as issue no.(v) is concerned, the same is only an attempt by some employees of primary societies, who have chosen to apply pursuant to the impugned notification, to take advantage of the situation to the detriment of those employees of member societies who did not apply pursuant to the notification. Their contention is that since the filling up of 50% vacancies reserved for employees of affiliated primary societies also is by direct recruitment there need not be separate mention of the same in the notification. Even the P.S.C. does not subscribe to that proposition. Further when there is a reservation for employees of affiliated primary societies, separate recruitment process inviting applications from such employees have to be necessarily made, which alone would satisfy the requirements of Rule 187. Otherwise, especially since there is no mention of such reservation in the impugned notification, candidates eligible to apply in that category

cannot be expected to submit applications assuming that the notification pertains to that category also. In such circumstances, I do not find any merit in the contentions of the petitioners in W.P (C).No.36279/2004.

13. The obvious result of the above discussion is that the impugned notification is liable to be quashed. I do so. There would be a direction to the P.S.C. to issue fresh notification inviting applications for recruitment to general candidates and employees of affiliated primary societies to the vacancies available to each category separately and simultaneously and make selection to advise candidates to the respective vacancies accordingly. In the result, W.P(C).Nos.27180/2004, 33119/2004, 36121/2004 and 36498/2004 are allowed as above and W.P(C).No.36279/2004 is dismissed. I make no order as to costs in the writ petitions.

Sd/-

sdk+ S.SIRI JAGAN, JUDGE

"This does not form part of the notification, but is intended to indicate its general purport).

Rule 186(1) of the Kerala Co-operative Societies Rules, 1969 has prescribed qualification of graduation in Commerce or Master Degree in Arts with Co-operation as special subject or B.A./B.Sc./B.Com. Degree of a recognized University with H.D.C. Or J.D.C. For all posts other than those requiring technical technical qualification, the starting pay of which is Rs.250 and above. AS per the said Rules, H.D.C/J.D.C. Is the basic qualification with graduation other than those who passes B.Com./M.A. with Co-operation as special subject. But basic qualification of H.D.C./J.D.C. is not incorporated in rule 186(1) (IA(1) of the said Rules for direct recruitment. In order to remove the disparity Government have decided to amend the Rule 186 (1)(IA)(I)."

"13. It is a cardinal principal of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation. But the rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the legislature to affect existing rights, it is deemed to be prospective only - "*nova constitutio futuris forman imponere debet non praeteritis*"- a new law ought to regulate what is to follow, not the pst. (See Principles of Statutory Interpretation by Justice G.P.Singh, 9th Edn., 2004 at p.438.) it is not necessary that an express provision be made to make a statute retrospective and the presumption against retrospectivity may be rebutted by necessary implication especially in a case where the new law is made to cure an acknowledged evil for the benefit of the community as a whole (ibid., p.440).

14. The presumption against retrospective operation is not applicable to declaratory statutes.... In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is "to explain" an earlier Act, it would be without object unless construed retrospectively. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended.... An amending Act may be purely declaratory to celar a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect (*ibid.*, pp.468-69)

15. Though retrospectively is not to be

presumed and rather there is presumption against retrospectivity, according to Craies (Statute Law, 7th Edn.), it is open for the legislature to enact laws having retrospective operation. This can be achieved by express enactment or by necessary implication from the language employed. If it is a necessary implication from the language employed that the legislature intended a particular section to have a retrospective operation, the courts will give it such an operation. In the absence of a retrospective operation having been expressly given, the courts may be called upon to construe the provisions and answer the question whether the legislature had sufficiently expressed that intention giving the statute retrospectivity. Four factors are suggested as relevant: (*i*) general scope and purview of the statute; (*ii)* the remedy sought to be applied; (*iii)* the former state of the law; and *(iv)* what it was the legislature contemplated. (p.388) The rule agaisnt retrospectivity does not extend to protect from the effect of a repeal,a privilege which did not amount to accrued right.(P.392).

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22. The State Legislature of Haryana intended to impose a disqualifiaiton with effect from 5.4.1995 and that was done. Any person having more than two living children was disqualified on and from that day for being a member of a municipality. However, while enacting a proviso by way of an exception carving out a fact situation from the operation of the newly introduced disqualification the draftsman's folly caused the creation of trouble. A simplistic reading of the text of the proviso speleld out a consequence which the legislature had never intended and could not hae intended. It is true that the Second Amendment does not expressly give the amendment a retrospective operation. The absence of a provision

expressly giving a retrospective operation to the legislation is not determinative of its prospectivity or retrospectivity. Intrinsic evidence may be available to show that the amendment was necessarily intended to have retrospective effect and if the Court can unhesitatingly conclude in favour of retrospectivity, the Court would not hesitate in giving the Act that operation unless prevented from doing so by any mandate contained in law or an established principle of interpretation of statutes."

"3. It is submitted that the Government also have taken note of the disparity in the qualification prescribed and have brought out a draft notification on 4.2.2005 for removing the same and it is also submitted that notice have been issued inviting suggestions and objections. The amendment to Rule 186(1A) incorporating HDC, HDC BM, HDC M/JDC will be made by Government after receiving suggestions and objections.